Tenn. 355. Declarations of intention are primarily valuable as expressions of intentions, but they are not controlling and are subject to being overcome by other and more reliable indications of the true intention. They often serve to turn the scale when they are not inconsistent with acts; but it is otherwise if they are contradicted by the acts and general conduct of the person making them. *Plant* v. *Harrison,* 74 N. Y. Supp. 411; *Long* v. *Ryan, supra;* JACOBS, DOMICIL, § 455. The requisite fact is the transfer of the person himself from the old place of abode to the new; and this factum must be commensurate with the intention. Therefore it is, that a new domicil cannot be acquired in itinere, except in cases of reverter. It is now the settled rule, both in this country and in England, that to constitute a new domicil both residence in the new locality and intention to remove there are indispensable. *Guier* v. *O'Daniel,* 1 Binney (Pa.) 349, note; *Price* v. *Price,* 156 Pa. St. 617; *Plant* v. *Harrison, supra. In re Moir's Estate,* 207 Ill. 180; *Marks* v. *Germania Bank,* 110 La. 659; *Wicker* v. *Hume,* 7 H. L. Cases, 124, 167; ENG. RULING CASES, Vol. IX, p. 689. Opposed to the rule laid down in the principal case, is *Bangs* v. *Brewster,* 111 Mass. 382, wherein it was held that a man by sending his wife to Orleans with intent to make it his home, thereby changed his domicil; that the fact of removal and intent concurred, and that although he was not personally present he established his home there from the time of his wife's arrival. But the weight of authority is against this case. Cf. *Casey's Case,* 1 Ashm. (Pa.) 126; *Penfield* v. *Chesapeake Ry. Co.,* 29 Fed. Rep. 494; *Hart* v. *Horn,* 4 Kan. 232.

EJECTMENT—BY RAILROAD COMPANY FOR RIGHT OF WAY.—Plaintiff brings ejectment against defendant to recover possession of land condemned for right of way, depot and terminal facilities. Defendant claimed the land by right of possession under a tax deed regular on its face, the erection of lasting improvements, and non-user of the lots by plaintiff for railway purposes. There had never in fact been any delinquency in the payment of taxes by the plaintiff. *Held,* ejectment could be maintained. *Kansas & C. P. Ry. Co.* v. *Burns* (1905), — Kan. —, 79 Pac. Rep. 238.

The decision seems to be based on defendant's unavailing defense rather than upon the strength of plaintiff's own title, and a minority dissent is placed on this ground, as it is fundamental that the plaintiff in ejectment must recover, if at all, on the strength of his own title. Had the plaintiff such a title? In the absence of explicit statutory provisions, the decisions are not harmonious. The railway company's interest is frequently broadly stated to be a mere easement. 14 CYC. 1162; *Ry. Co.* v. *Schmuck* (Kan.) 76 Pac. 836; *Taylor* v. *Ry. Co.* 38 N. J. L. 28; *Ry. & Nav. Co.* v. *Real Estate Co.,* 10 Ore. 444; *Shields* v. *Ry. Co.,* 129 N. Car. 1; *Lyon* v. *McDonald,* 78 Tex. 71; JONES, EASEMENTS, § 211; LEWIS, EM. DOM. 278. But ejectment does not lie for an easement. *Fritsche* v. *Fritsche,* 77 Wis. 270; *Northern Transportation Co.* v. *Smith,* 15 Barb. 355. After holding such an interest to be a "mere easement" many courts further declare it will revert to the original owner if the purpose for which it was taken is abandoned. *Noll* v. *D. B. & M. Ry. Co.,* 32 Ia. 66; *Kellogg* v. *Malin,* 50 Mo. 496; *Ry. Co.* v.

Telford, 89 Tenn. 293; *Chouteau* v. *Mo. Pac. Ry. Co.,* 122 Mo. 375. But this is evidently an improper use of terms. LEWIS, EM. DOM. § 596. That more than an easement is obtained and that ejectment will lie, see *Currie* v. *Transit Co.* (N. J.) 58 Atl. 308; *Aden* v. *District No. 3,* 97 Ill. App. 347; *Ry. Co.* v. *Holton,* 32 Vt. 43; *Chaplin* v. *Commissioner,* 126 Ill. 264, (Overruling earlier decisions); *T. & C. Ry. Co.* v. *Alabama Ry. Co.,* 75 Ala. 516; *Gurney* v. *Elevator Co.,* 63 Minn. 70; *Ry. Co.* v. *Peet,* 152 Pa. St. 488. In some states a fee is given by statute where the circumstances require such an estate. *State* v. *Griftner,* 61 O. St. 201; *Sou. Pac. Ry. Co.* v. *Burr,* 86 Cal. 279; *N. Pac. Ry. Co.* v. *Lannon,* 46 Fed. 224.

EQUITY—NAVIGABLE WATERS—OBSTRUCTION—SPECIAL INJURY.—The complainant owned and used a steamboat for the sole purpose of navigating a particular creek. He had entered into a traffic contract with another common carrier and had built up a good business. Defendants (County Commissioners) erected a bridge across the creek, which so obstructed it that complainant's boat could not pass. In a suit to abate the obstruction. *Held,* that equity could not interfere. *Thomas* v. *Wade* (1904), — Fla. —, 37 So. Rep. 743.

A private person cannot maintain a suit to enjoin or abate a public nuisance unless he shows some injury peculiar and special to himself. COOLEY ON TORTS, 46; *Clark* v. *Chicago & N. W. Ry. Co.,* 70 Wis. 593, 36 N. W. Rep. 326; *Jarvis* v. *Santa Clara Ry. Co.,* 52 Cal. 438. By the great weight of authority it is considered that the right of navigation being a public right, any obstruction thereof affects all equally and cannot be abated at the suit of an individual. GOULD ON WATERS, Sec. 172; *Swanson* v. *Miss. River Boom Co.,* 42 Minn. 532; *Steamboat Co.* v. *Railroad Co.,* 30 S. C. 539, 4 L. R. A. 209 and note; *Lownsdale* v. *Gray's Harbor Boom Co.,* 117 Fed. Rep. 983. On the other hand it has been held that the owner of a boat used along a definite route, the passage of which is obstructed, suffers a special injury; it being immaterial whether or not others own boats engaged in the same business. *Farmers' Co-operative Mfg. Co.* v. *Albemarle & Raleigh R. R. Co.,* 117 N. C. 579, 23 S. E. Rep. 43, 29 L. R. A. 700; *Enos* v. *Hamilton,* 27 Wis. 256 (distinguished in *Clark* v. *Ry., supra*). See also *Stetson* v. *Faxon,* 19 Pick. 147. Such cases are to be distinguished from those wherein there is an interference with complainant's right of access to his land. *Glover* v. *Powell,* 10 N. J. Eq. 211; *Whitehead* v. *Jessup,* 53 Fed. Rep. 707. The general rule is followed in the present case.

EQUITY—PERSONAL TRESPASS—INJUNCTION.—The defendant threatened to forcibly eject complainant from his rooms and to destroy his furniture. In a suit to enjoin him from so doing, *Held,* that injunction would not lie. *Kredo* v. *Phelps* (1904), — Cal. —, 78 Pac. Rep. 1044.

No cases are cited in the opinion but the same result is reached as in *Forbes* v. *Carl* (1904), — Iowa —, 101 N. W. Rep. 100, commented on in 3 MICHIGAN LAW REVIEW, 226. In the principal case the court says: "If an injunction could be granted in this case, there is no reason why it should